

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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TYRONE NOEL NUNN,

v.

ELY STATE PRISON, *et al.*,

Plaintiff,

Defendants.

Case No. 3:23-cv-00572-MMD-CLB

ORDER

On November 17, 2023, this Court ordered *pro se* Plaintiff Tyrone Noel Nunn to submit a complaint and file a fully complete application to proceed *in forma pauperis* ("IFP application") or pay the full \$402.00 filing fee on or before January 16, 2024. (ECF No. 3.) Plaintiff was warned the action could be dismissed if he failed to submit a complaint and file a fully complete IFP application with all three documents or pay the full \$402.00 filing fee for a civil action by that deadline. (*Id.* at 2-3.) When the deadline expired, Plaintiff had not filed a fully complete IFP application or paid the full \$402.00 filing fee.

Because Plaintiff submitted an amended complaint, two motions for appointment of counsel, and an incomplete IFP application (ECF Nos. 4, 5, 6, 7), the Court considered meaningful alternatives to dismissal and issued another order on February 20, 2024, granting Plaintiff one final opportunity to file a fully complete IFP application by the deadline of March 15, 2024. (ECF No. 8.) The deadline has now expired, and Plaintiff still has not filed a fully complete IFP application, paid the full \$402.00 filing fee, or otherwise responded.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court

1 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
 2 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
 3 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
 4 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
 5 dismiss an action on one of these grounds, the Court must consider: (1) the public's
 6 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
 7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 8 cases on their merits; and (5) the availability of less drastic alternatives. See *In re
 9 Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 10 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

11 The first two factors, the public's interest in expeditiously resolving this litigation
 12 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
 13 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
 14 because a presumption of injury arises from the occurrence of unreasonable delay in filing
 15 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
 16 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
 17 cases on their merits—is greatly outweighed by the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic alternatives can
 19 be used to correct the party's failure that brought about the Court's need to consider
 20 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 21 that considering less drastic alternatives *before* the party has disobeyed a court order
 22 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
 23 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
 24 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
 25 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
 26 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
 27 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
 28 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779

1 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
2 unless Plaintiff either files a fully complete IFP application or pays the \$402.00 filing fee
3 for a civil action, the only alternative is to enter a third order setting another deadline. But
4 the reality of repeating two ignored orders is that it often only delays the inevitable and
5 squanders the Court's finite resources. The circumstances here do not indicate that this
6 case will be an exception: there is no hint that Plaintiff needs additional time or evidence
7 that he did not receive the Court's order. Setting a third deadline is not a meaningful
8 alternative given these circumstances. The fifth factor thus favors dismissal. Having
9 thoroughly considered these dismissal factors, the Court finds that they weigh in favor of
10 dismissal.

11 It is therefore ordered that this action is dismissed without prejudice based on
12 Plaintiff's failure to file a fully complete IFP application or pay the full \$402.00 filing fee in
13 compliance with this Court's November 17, 2023 and February 20, 2024 orders.

14 It is further ordered that the Clerk of Court is directed to enter judgment accordingly
15 and close this case. No other documents may be filed in this now-closed case. If Plaintiff
16 wishes to pursue his claims, Plaintiff must file a complaint and satisfy the matter of the
17 filing fee in a new case.

18 DATED THIS 26th Day of March 2024.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE